

**EMPLOYMENT APPEALS BOARD DECISION**  
**2018-EAB-0583**

*Reversed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On April 11, 2018, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 73936). Claimant filed a timely request for hearing. On May 14, 2018, ALJ Scott conducted a hearing and issued Order No. 18-UI-109287, affirming the Department's decision. On June 1, 2018, claimant filed an application for review with the Employment Appeals Board (EAB).

Claimant failed to certify that she provided a copy of her argument to the other parties as required by OAR 471-041-0080(2)(a) (October 29, 2006). The argument also contained information that was not part of the hearing record, and failed to show that factors or circumstances beyond claimant's reasonable control prevented claimant from offering the information during the hearing as required by OAR 471-041-0090 (October 29, 2006). We considered only information received into evidence at the hearing when reaching this decision. *See* ORS 657.275(2).

**FINDINGS OF FACT:** (1) ARS Fresno, LLC employed claimant as a cashier from September 25, 2016 to October 16, 2017. Claimant worked 24 to 28 hours per week at a rate of \$10.25 per hour.

(2) Claimant decided to relocate to Texas. She sought work in Texas before relocating so that she would have a job in Texas when she moved.

(3) Claimant applied for a job with GC Services in Texas. In approximately September 2017, GC Services offered claimant a job working at least 40 hours per week at a rate of \$10.00 per hour. The offer was to begin working as soon as she moved to Texas. Claimant accepted the offer.

(4) GC Services required claimant to undergo a drug screen after beginning work, and told her she would be discharged if she failed the drug screen. While continued employment was contingent upon claimant passing the drug screen, the employer hired claimant to begin work before the drug screen was completed. Claimant knew at the time she left work for the employer that the job at GC Services was

for permanent employment, and she knew that she would pass the drug test because she did not use drugs.

(5) Claimant notified the employer during the third week of September that she planned to leave work in mid-October. Claimant worked for the employer until the last day she could work before moving to Texas, and quit work on October 16, 2017.

(6) Claimant moved to Texas and began training with GC Services as soon as possible. She took and passed the required post-employment drug screen. Her job with GC Services ended because claimant was absent due to illness during a training period in violation of GC Services policy.

**CONCLUSIONS AND REASONS:** We disagree with the ALJ and conclude that claimant voluntarily left work with good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). OAR 471-030-0038(5)(a) provides that an individual has “good cause” for leaving work to accept an offer of other work “if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances,” and if the new work is “reasonably expected to continue” and pays, in pertinent part, “[a]n amount greater than the work left.”

In Order No. 18-UI-109287, the ALJ concluded that claimant left work without good cause because, although the offered work paid more than the job claimant left and started in the shortest time possible under the circumstances, the offered work was not “definite” because “she knew that she had to take and pass a drug screen before starting work at her new employer in Texas.” Order No. 18-UI-109287 at 3. We agree with the ALJ that the offered work paid more than her job with the employer. We also agree with the ALJ that claimant’s new job started in the shortest time possible under the circumstances given the evidence that she worked for the employer as long as she could, and started the new job as soon as possible after arriving in Texas.

However, the record does not support the ALJ’s conclusion that the offered work was not definite. The contingency that existed in this case was not a pre-employment contingency that would prevent claimant from beginning work for the new employer. In fact, claimant testified that GC hired her, employed her, and began training her before the results of the drug test were known. Therefore, although claimant’s *continued* employment was contingent upon claimant passing a drug screen, the *offer* of employment was not. In the absence of legally significant pre-employment contingencies, the evidence shows that the offer of employment was definite. Claimant therefore is not disqualified from benefits because of GC’s imposition of a post-employment drug test requirement.

The ALJ also concluded that claimant’s job was “reasonably expected to continue” because the job was “permanent, not seasonal or temporary.” Order No. 18-I-109287 at 2. We agree with the ALJ that the work was permanent rather than seasonal or temporary, and that those are factors to consider when determining whether a job should be considered “reasonably expected to continue.” However, because the expectation that claimant’s new job would continue past the initial phase was contingent upon claimant passing a post-employment drug test, the inquiry must expand to consider whether, in light of

that contingency, the work may still be considered “reasonably expected to continue.” The evidence in this case shows that it was. Although claimant had to pass a drug test as a condition of continued employment, claimant knew that she did not use drugs and would pass the drug test. Therefore, notwithstanding the post-employment drug test contingency, she reasonably expected the work to continue. We reasonably infer from the evidence that GC had claimant begin work without first passing the drug test because GC also reasonably expected the work to continue, as it would make little sense for an employer to invest time and resources in having an employee begin undergoing training if the employer did not reasonably expect that the work would continue. It therefore appears that both claimant and the employer “reasonably expected” claimant’s new job “to continue,” and that, objectively considered, the job was reasonably expected to continue.

For those reasons, we conclude that claimant quit work for a definite offer of work that paid more than the work left, started in the shortest period of time reasonable under the circumstances, and was reasonably expected to continue. She therefore left work with good cause, and is not disqualified from receiving benefits because of this work separation.

**DECISION:** Order No. 18-UI-109287 is set aside, as outlined above.<sup>1</sup>

J. S. Cromwell and D. P. Hettle;  
S. Alba, not participating.

**DATE of Service: July 9, 2018**

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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<sup>1</sup> This decision reverses an order that denied benefits. Please note that payment of any benefits owed may take from several days to two weeks for the Department to complete.